

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

STEVEN BRAUNSTEIN,

Petitioner,

vs.

JAMES COX, et al.,

Respondents.

Case No. 2:07-cv-00014-RLH-GWF

ORDER

Before the court are petitioner's motion to strike and/or vacate order (ECF No. 126), respondents' opposition (ECF No. 127), and petitioner's reply (ECF No. 128). The court denies petitioner's motion.

When the court denied the petition for a writ of habeas corpus and entered judgment on July 6, 2010 (ECF No. 115, 116), petitioner was in custody pursuant to the state court's original judgment of conviction. On August 12, 2010, the state district court entered an amended judgment of conviction. The amended judgment left the original sentence intact and added 40 days of credit for time served in jail. ECF No. 126, at 6-7.¹ Petitioner now argues that the entry of the amended judgment of conviction on August 12, 2010, meant that no judgment of conviction was in existence when the court denied the petition on July 6, 2010, that this court was without jurisdiction, and that petitioner in fact was not in custody. Petitioner is wrong. At most, an amended judgment of conviction supersedes the original judgment of conviction. The entry of an amended judgment does

¹Petitioner unsuccessfully challenged his custody pursuant to the amended judgment of conviction in Braunstein v. Cox, 3:11-cv-00587-LRH-WGC.

1 not mean that the original judgment never existed. Petitioner was in custody pursuant to the original
2 judgment of conviction until August 12, 2010, and then he was in custody pursuant to the amended
3 judgment of conviction. There was no break in petitioner's custody, and there never was a time
4 relevant to the motion (ECF No. 126) that petitioner was not in custody pursuant to a state-court
5 judgment of conviction. Petitioner's motion is without merit.

6 To the extent that a certificate of appealability is necessary, reasonable jurists would not
7 disagree with the court's determination, and the court will not issue a certificate of appealability.

8 IT IS THEREFORE ORDERED that petitioner's motion to strike and/or vacate order (ECF
9 No. 126) is **DENIED**.

10 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

11 DATED: June 7, 2016.

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14 ROGER L. HUNT
15 United States District Judge
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